

Representative Paul Gosar  
Testimony before the U.S. Senate Committee on Indian Affairs  
Oversight Hearing on the Future of Indian Gaming  
July 23, 2014

Chairman Tester and members of the Committee, thank you for the opportunity to testify regarding the future of Indian gaming and the need for passage of H.R. 1410.

I have been actively involved in a troubling off-reservation gaming issue in my home state of Arizona involving the Tohono O'odham Nation.

The tribe is attempting to move from their ancestral lands in Tucson, into another tribe's former reservation in the Phoenix metro area, for the sole purpose of building a casino.

This comes after T O and other Arizona tribes adopted a compact, approved by Arizona voters, which expressly promised there would be no additional casinos or gaming in the Phoenix metro area until 2027.

In exchange for this promise, the voters granted the tribes a statewide monopoly on gaming and other tribes gave up significant rights.

This Committee has before it, H.R. 1410, the Keep the Promise Act, sponsored by my good friend and colleague Trent Franks from Arizona that ensures the promise of no additional casinos in the Phoenix area is kept until the existing tribal-state gaming compacts expire, without interfering in the trust acquisition itself.

In return for exclusivity in Arizona, the tribes agreed to a cap on the number of casinos in the state and in the Phoenix metro area, to restrict the number of machines in the state and to share machine revenue with rural non-gaming tribes so all could benefit.

Every urban tribe, except for T O, agreed to this limitation. T O refused, citing the need for a new casino in Tucson or on the rural part of the tribe's reservation.

The state and other tribes finally agreed to the restrictions on gaming being pushed by Arizona's Governor and others, but also yielded to T O's stated need.

After the agreement was reached, the tribes and state promoted their model compact by saturating the airwaves with press releases, voter handouts, billboards, and in television and radio interviews. Tohono O'odham alone spent \$1.8 million dollars urging Arizona voters to rely on the limitation which included no additional casinos in the Phoenix area.

However, in 2001, while negotiations were ongoing and unbeknownst to everyone, Tohono had begun efforts to find land in the Phoenix area to open their fourth casino.

What is worse is that while T O was planning to buy land in Glendale for a casino, the City of Glendale was building a public school a few blocks away. That school opened in 2004 but T O kept their intentions concealed until five years later.

The voters approved the tribal state compact in November 2002 and rejected two competing propositions to expand gaming in the metropolitan area.

In 2003, a few months after the voters approved the compact, T O finalized its multiyear effort to purchase land in Glendale for a casino and used a shell corporation to conceal its identity.

The voters approved the proposal of the 17-tribe coalition because it was sold to the voters as the only proposition that would halt the growth of gaming in Phoenix and keep gaming out of local communities.

The system was a national model, and was working well, until 2009 when the T O announced that it would seek lands into trust off their reservation and in the Phoenix area for gaming.

T O's dismissal of their promise to build no additional casinos in Phoenix is not something that Congress can ignore when the result will be so harmful to what had been a national model.

No entity, governmental or otherwise, should be rewarded for deceptive conduct that violates a compact and is contrary to the will of voters.

T O likes to say that to date they are winning in the courts, which is a continuation of the deceitful manner in which they have dealt with this issue. T O fails to mention that the reason the Court did not rule against them in a recent case was not due to the strength of their position but because of sovereign immunity.

In fact, after reviewing one of the claims, the District Court stated that the evidence "would appear to support" the claim that the Tohono O'odham fraudulently induced other tribes and the State into agreeing to the gaming compact, however, the court did not rule because it was "barred by the Nation's sovereign immunity."

The Supreme Court has, in fact, ruled on a similar issue but not in the favor the tribe is boasting. In the case *Michigan v. Bay Mills Indian Community*, the Court upheld the tribe's sovereign immunity from being sued by the state of Michigan, BUT it also stated that only Congress can act when a tribe raises such immunity.

That is exactly why this legislation is necessary. Failure to adopt this commonsense legislation will negatively impact gaming and upend compacts throughout the nation.

Thank you again for the opportunity to testify before the Committee Mr. Chairman and with that, I yield back.